IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.1663 OF 2006

M/s.Graphic Polytechnics : Petitioner

V/s.

Mohanlal Karsandas Parmar & Ors. : Respondents

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Mr.D.S.Sawant for the petitioner.

Mr.D.B.Sawant for respondent nos.1 & 2.

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CORAM : S.A.BOBDE, J.

DATE : JULY 12, 2007.

P.C.

Rule, returnable forthwith.

Heard by consent.

2. The trial Court has refused permission to the petitioner to amend the Written Statement. The petition is filed against that order.

3. Mr.Sawant, the learned counsel for the petitioner, pointed out that earlier the petitioner had stated in its Written Statement that they are in possession of the premises under an agreement of the year 1981. By the proposed amendment, they wish to bring on record the fact

that they have been in the premises since prior to 1981 and that too to the knowledge of the plaintiffs. This has been rejected by the trial Court. It is true that the petitioner proposes to bring on record a fact which they may have known prior to the application for Written Statement. However, now the petitioner seeks to bring on record the fact on the basis of a pre-existing situation which is alleged to be in the knowledge of the respondents. It is true that the proposed amendment amounts to adding a ground of defence. However, this Court is inclined to allow such amendment. In Baldev Singh v. Manohar Singh (2006 (5) Mh.L.J. 634), the Supreme Court observed as follows:-

> "Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action. Accordingly, in the case of amendment of written statement, the Courts are inclined to be more liberal in allowing amendment of the written statement than of plaint and question of prejudice is less likely to operate with same rigour in the former than in the latter case."

In view of the aforesaid observations, I am inclined to allow the amendment to the Written Statement.

4. The impugned order rejecting the application for amendment is hereby set aside. The petitioner shall be allowed to amend the Written Statement. The amendment shall be carried out within four weeks from today.

5. The rule is made absolute in the aforesaid terms. Having regard to the fact that the suit has been filed by a trust for recovery of its property, the suit which has been delayed, inter alia, on account of amendment is hereby directed to be decided as expeditiously as possible.

S.A. BOBDE, J.